



# State Administration, Public Retirement, and Veterans' Affairs Interim Committee

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## 56th Montana Legislature

### SENATE MEMBERS

SUE BARTLETT, VICE-CHAIR  
E.P. "PETE" EKEGREN  
DON HARGROVE  
GLENN A. ROUSH

### HOUSE MEMBERS

MATT BRAINARD, CHAIRMAN  
EDITH J. CLARK  
TOM DELL  
CAROL WILLIAMS

### COMMITTEE STAFF

SHERI HEFFELFINGER  
RESEARCH ANALYST  
JOHN MacMASTER, ATTORNEY  
DAVID NISS, ATTORNEY  
JOANN JONES, SECRETARY

## MINUTES

February 28-29, 2000  
Montana Association of Counties  
Helena, Montana

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of documents.**

### COMMITTEE MEMBERS PRESENT

Rep. Matt Brainard, Chairman  
Sen. Sue Bartlett, Vice Chair

Sen. E.P. "Pete" Ekegren  
Sen. Don Hargrove  
Sen. Glenn A. Roush

Rep. Edith J. Clark  
Rep. Tom Dell  
Rep. Carol Williams

### STAFF PRESENT

Sheri Heffelfinger, Research Analyst  
Dave Bohyer, Director, Office of Research Policy & Analysis  
John MacMaster, Attorney  
David Niss, Attorney  
Jo Ann Jones, Secretary

### VISITORS

Visitors' list, Attachment #1.

### **COMMITTEE ACTION**

C      Approved the minutes of the January 21, 2000 meeting.

### **CALL TO ORDER AND ROLL CALL**

Rep. Brainard called the meeting to order at 1:05 p.m. Roll call was noted. (See Attachment #2.) Sen. Bartlett moved to adopt the minutes of the January 21, 2000 meeting. The motion passed by unanimous voice vote.

### **REPORT FROM THE PUBLIC EMPLOYEES RETIREMENT DIVISION**

Mike O'Connor, Director, Public Employees Retirement Division (PERD), said there was not much to report except that the examination of proposals from the RFP that was recently issued would begin that next week.

Rep. Dell asked how many proposals would constitute a satisfactory response. Mr. O'Connor said that it depends on the service and commented that there are not many vendors who provide record keeping services.

Rep. Dell asked how membership on the evaluation committee had been determined. Mr. O'Connor said it depended on the type of service that was being considered. He said each committee has at least one Public Employees Retirement Board member and there are four core members who are on all evaluation committees: himself, Kathy Samson, Keith McCallum, and Terry Teichrow.

Sen. Bartlett asked if the Mercer company has an ongoing role with the RFP and the rest of the selection and implementation process. Mr. O'Connor said that Mercer will be used for investment education services and will continually be involved in the process, through implementation.



## **YOUTH CHALLENGE PROGRAM**

### **Exhibit #1: Photocopy of slide presentation**

Mike Royer, Director, Montana National Guard Youth ChalleNGe Program, provided an overview of the first Youth ChalleNGe class to graduate from the program, and proposed changes for the second class.

Sen. Hargrove asked how many Youth ChalleNGe programs are in the United States. Mr. Royer said there are 27, including Louisiana, which has two programs. Sen. Hargrove asked if other states had a higher success rate than Montana's 67%. Mr. Royer said the highest success rate nationally is in the low 80 percentile range.

Sen. Hargrove asked if the program is rigidly or flexibly structured. Mr. Royer said new students are tested to determine academic levels. He said all students work toward achieving their high school equivalency certification (GED), not just the top percentile, like in some programs.

Sen. Hargrove asked how staff are selected. Mr. Royer said that he was the first employee hired; after that came the recruiting team that worked from a federal model. Teachers, counselors, and cadre were then selected. He said there has been very little turnover of personnel.

Rep. Clark asked how mentors are chosen. Mr. Royer said mentors must be at least 21 years old, have a good background, are employed, and want to spend time with youth. He said a background check is done on each prospective mentor and, after selection, men are matched with male youths and women with female youths. He said the mentor program is the cornerstone of the whole program.

Rep. Williams asked how increasing the number of Native American participants is planned. Mr. Royer said one recruiter's primary function is to work with tribal councils

on the reservations. He said that it has been a goal to hire a tribal official as a recruiter but, so far, that has not been successful.

Rep. Dell asked for clarification on moving the 2-week pre-ChalleNGe program to Ft. Harrison. Mr. Royer said doing the pre-ChalleNGe in Dillon put a lot of stress on the staff and on the town itself. He said that one example of the stress on the town is that there were not enough available beds for all of the pre-ChalleNGe youth who had come to Dillon to participate.

Sen. Bartlett asked for an explanation of post-residential staff. Mr. Royer said that there is one post-residential coordinator who selects the mentors and makes the appropriate matches with the students.

Sen. Bartlett asked if completing the GED is a requirement, and if any students did not receive a GED. Mr. Royer said that academic improvement is sought, but receiving a GED is not a requirement. Sen. Bartlett asked what type of post-residential assistance is available for a student who has progressed but was not able to receive a GED. Mr. Royer said the first step is to determine how close the student was to qualifying for a GED. It is possible that the GED may be attainable through the use of tutorials. For those who are further away, the Job Corps is a good resource for further academic training.

Sen. Bartlett asked if the pre-ChalleNGe program is the only portion that parallels the boot camp environment. Mr. Royer said the structure and discipline is maintained, but the intensity lessens. He said that because the program is voluntary, a youth who wants to leave cannot be stopped. He said the town of Dillon has embraced the program.

Sen. Bartlett asked for a description of a typical day. Mr. Royer said the students are awakened at 5:00, report for physical training at 5:15, that is followed by breakfast, showering, formation on the way to class, and then lunch. The students attend class from 11:00 to 3:30, have tutorials until 4:15, have the evening meal from 4:30 to 5:30, and then are in study hall from 7:00 to 8:30. He said that by 9:00, the students are in bed.

Sen. Hargrove asked how individual students are tracked after they leave the program. Mr. Royer said the National Guard Bureau does that nationally, using data from weekly reports submitted by each program. He said there is inadequate funding to track the students after they have completed the 17-month program.

Rep. Brainard asked if the third grade test result is the minimum that instructors can work with, and asked how test scores indicated grade level percentages. Mr. Royer said that most students test at the sixth and seventh grade levels. Rep. Brainard asked if there was any information that would indicate why these youths test lower than their ages might indicate. Mr. Royer said a study was done in Arizona to determine how reading levels correlate to incarceration. He said one indication of the study was that when reading levels are low, behavior problems result because the student is trying to disguise the lack of reading skills.

Sen. Roush asked how the first class was divided according to gender. Mr. Royer said approximately 30% were female, which is about 10% above the national average.

Rep. Williams asked for the approximate cost per pupil. Mr. Royer said the national average is \$14,000 per youth.

Sen. Ekegren asked why the program is geared to 16-18 year- old individuals instead of younger children. Mr. Royer said there is a need for programs for younger individuals but it's difficult to determine when a child is too young for intervention. He said that individuals who are 13 or 14 would immediately return to the original environment with the same friends and home life after graduation from the program and, within a very short period of time, would be back doing the things that created the problem. Those who are older are ready to move on to a job or higher education and can make a clean break from past situations that may have gotten them into trouble.

Rep. Dell asked if part of the program is vocational. Mr. Royer said that it is desired that graduates have a job, occupation, or college waiting for them on the day that they graduate.

## **SJR 9 CONTRACTING STUDY**

### **Exhibit #2: Issues and Options Work Sheet**

Dave Bohyer, Director, Office of Research Policy & Analysis, discussed Exhibit #2 to be worked through by Committee members.

### **Interest Rates for Late Payments**

Mr. Bohyer said that confusing and contradictory language exists regarding the applicable interest rate if the state is late making a contract payment. The options are to leave current law as is or, as the Department of Administration (DOA) recommends, amend existing law to clarify the applicable rate of interest.

Rep. Brainard said that market rate of interest might be more reasonable than a set rate. If a contractor has to borrow money or utilize savings to meet payroll or other expenses, it is an additional cost for the contractor.

Sen. Ekegren said there is also an inconvenience factor when a contractor does not receive timely payment.

Sen. Hargrove asked if the conflicting statutes are specific. Mr. Bohyer said Title 18 states the interest rate is 10% and Title 17 says the rate is .05% per day. Sen. Hargrove asked if a non-specific statute would be possible. Mr. Bohyer said that it would be possible, but a non-specific statute could create difficulties in tracking what the market rate was on a specific date.

Rep. Brainard said the system must be designed so there is no possibility of abuse on either side.

Sen. Ekegren said that the payment schedule would be stated within the body of the contract if the purchase is a one-time, high ticket item, such as a fleet of vehicles.

Sen. Ekegren asked if vendors are now being paid on time. Marvin Eicholtz, Administrator, Procurement Division, DOA, said he does not believe there is a problem with vendors receiving timely payment. He said that utilizing a market rate of interest would create an administrative nightmare.

Rep. Brainard said the issue is to standardize the rate and to determine what the basis is.

Sen. Bartlett asked why there are two specific sections of law dealing with the same issue. Steve Garrison, staff attorney, Department of Transportation (DOT), said one section (Title 18) came from litigation that arose after a dispute with a contractor. The contractor claimed payment was due for work that was not required for a certain section of a DOT project.

Sen. Hargrove said the two sections might be appropriate to differentiate types of dispute or nonperformance, and all that is needed is to clarify the law.

Rep. Brainard said the title of Title 18 indicates that it applies to litigation against the state, not late payments. He said specific language could be inserted into one section to indicate its application.

Sen. Bartlett asked if there is a substantive rationale for having two specific sections of law, and said she wonders how these sections apply to general contract law.

The Committee requested staff to prepare draft legislation clarifying the applicability of the two different interest rates, with the lower rate applicable to contract disputes and the higher rate due to oversight or negligence by the state.

#### No Cost Procurement

Mr. Bohyer said the issue arises from the statement in the Montana Procurement Act that the Act applies to the expenditure of "public funds," but the law is unclear when public funds are not being spent, yet the vendor profits from an activity or transaction within the state. He said the options are to leave the statute as is or to clarify its wording. The DOA's preference is that the Procurement Act would apply whether or not public money is expended.

Sen. Hargrove asked about foundation money. Mr. Eicholtz said the problem arises when foundation money is deposited into a state account.

Rep. Dell said the first consideration is whether a profit can be made.

Rep. Brainard said that, to the public, the appearance of impropriety is the same as impropriety itself. He said that the DOA is acting correctly by attempting to solidify the process in adherence to the Procurement Act.

Rep. Brainard asked if the University system is required to adhere to the Procurement Act. Mr. Eicholtz said that it is, generally speaking, because procurement authority is delegated to it. He said that the Act does not apply to energy purchases.

Rep. Brainard moved that staff prepare statutory language to include no-cost procurements in the Montana Procurement Act.

John MacMaster, staff attorney, said that he would not call that situation a procurement because there is a reason that procurements and construction were covered separately in law. He said that law should apply to that situation, but was not sure that it should be the Procurement Act.

Rep. Brainard said that "use of state assets" could be used in statutory language instead of public money.

#### Grant Funds Distribution

Mr. Bohyer said the issue involves unclear statutory language in regard to the distribution of grant monies if distributed to non-governmental entities or if the funds come from non-federal sources. He said the options are to leave the statute as is, specifically identify where special considerations apply, or generally clarify statutory language (the option recommended by the DOA).

Rep. Brainard said that in order to derive maximum benefit from the funds, the projects must be competitively bid, no matter the source of the funds. He

recommended clarifying existing statutory language. Sen. Hargrove said he agreed with Rep. Brainard.

Mr. Eicholtz said that the DOA's position has always been that these types of situations are subject to the Procurement Act, but the real problem has been convincing the agencies of that.

#### Application of the Montana Procurement Act

Mr. Bohyer said that unclear statutory language implies that the Procurement Act does not apply to purchases made by certain programs, such as contracts for prisoner confinement. He said the options include leaving statutory language as is, revision of the Act to limit its applicability, revision of the Act to establish its primacy for all state contracts, or identify each statutory provision and assess whether there is conflict with the Act and adopting the appropriate measure. He said the DOA recommends adoption of the last option.

Rep. Brainard said his preference is to clearly state that, absent a specific exception or exclusion, the Procurement Act applies in all state contracts.

Sheryl Motl, Bureau Chief, State Procurement Bureau, said there are places in existing law that seem to leave loopholes, allowing agencies to avoid adhering to the Act.

Rep. Brainard said the problem might arise in bill drafting when ambiguous language is used. Mr. MacMaster said that although it might not be clearly stated, the Procurement Act would apply if the language is ambiguous. He said a bill drafter must list all exemptions to the existing law.

Sens. Hargrove and Roush said they agreed with Rep. Brainard's recommendation to strengthen the Procurement Act. Staff was requested to prepare draft legislation that reflects the committee's preference, i.e., Rep. Brainard's recommendation.

### Procurement Protests

Ms. Motl said the problem lies in the fact that there are too many protests and the state does not have adequate resources to deal with them. She said the protest process consists of the following steps: a 14-day period from contract signing to file a protest, followed by a 30-day period for the DOA to respond to the complaint. Subsequently, the complainant can request a MAPA hearing if the response is not satisfactory. If the MAPA hearing does not resolve the issue, then the complainant can file litigation. She said that because the complainant is usually represented by an attorney at the MAPA hearing, the DOA feels compelled to hire outside attorneys to represent the state's interests.

The suggested options include not allowing protests, requiring the protester to deposit a certain amount of money to cover costs if the protester does not prevail, providing direct financial support to cover state costs of handling protests, or eliminating the contested case hearing and leaving the vendor the option to file litigation if the state's response to the protest is not satisfactory. The DOA recommends the last option.

Sen. Hargrove said he was intrigued with the possibility of the complainant making a deposit and, if the state should win the case, the costs are taken from that deposit. Mr. Eicholtz said the protests usually are lodged on large contracts. He said the losing vendor may claim that posting the deposit is a financial hardship and ask why he has to put up money just to protest a state decision. He said the idea of a deposit is probably not good for small business.

Sen. Ekegren asked how many protests the state has won, and how many have actually reached district court. Ms. Motl said the state has prevailed on 21 out of 23 protests, and one case went to court.

Sen. Ekegren said it is not unreasonable to expect vendors to assume responsibility if they wish to protest the awarding of contract because they shouldn't be protesting for only protest sake.

Rep. Williams asked for the approximate cost of handling a protest. Ms. Motl said that, in a current case, private legal counsel estimates that the cost will be \$10,000 to \$15,000 just to bring the case to a hearing.

Rep. Brainard asked if the work involved in a hearing would be similar to that involved in a court case. He said that in private business, there is no provision for arbitration and a dispute has to be litigated in court. He said that he sees nothing inherently wrong in telling vendors to file a lawsuit if it is believed that the law has been broken, and that he would support the option of not allowing protests at all.

Sen. Bartlett asked if a court case is merely a review of the hearing, or if it is an entirely new case. Ms. Motl said that once a case is in court, there is a chance that everything will be reviewed because the issues may not be narrowed. Sen. Bartlett asked if there is a provision in law that awards the attorney's fees to the prevailing party. Ms. Motl said no.

Sen. Hargrove said that although he agreed with Rep. Brainard's analysis, it may be difficult getting legislation that eliminated the protest process through the Legislature because it would be perceived as being heavy-handed. Mr. Eicholtz said that Sen. Hargrove's analysis was correct and that he believes there should be a provision for protesting. He said the DOA's problem is with frivolous protests, brought only

because a vendor was not awarded a high dollar contract. He recommended that certain steps must be performed before a vendor can lodge a protest, thereby tightening up the process.

Rep. Dell asked if the DOA is recommending establishing the legitimacy of the protest in lieu of the contested case hearing. Mr. Eicholtz said the DOA was advocating the elimination of the contested case hearing.

Rep. Brainard said the option favored by the DOA is non-costly and face-saving procedure that eliminates the need for what is essentially a court case followed by another court case.

Sen. Bartlett said requiring a basis for the protest is reasonable.

Rep. Williams said that she approved of the recommended option, with the addition of establishing standards that must be met before a protest could be filed. She said that gives the people an avenue of protest outside of the court system.

Rep. Brainard asked for Committee consensus to approve that option. Sen. Ekegren said that he did not openly oppose it, but had some reservations about it. Staff was requested to prepare draft legislation that reflects the Committee's preferences.

#### Outreach to the Business Community

Mr. Bohyer said that due to increasing complexity, many businesses do not understand the procurement and contracting processes, nor how to conduct business with the state. He said the options include: dedication of additional funding for outreach efforts, recommend the status quo, or reduce funding. The DOA is advocating the dedication of additional funding for increased outreach efforts to businesses.

Mr. Eicholtz said that every successful procurement program has a successful outreach program. Businesses do not understand how to do business with the state, and the DOA would like to receive additional funding to provide an educational outreach program.

Rep. Dell said that he supported the concept outlined by Mr. Eicholtz. He said that it is almost necessary to keep Montana small businesses informed so that they can compete. He said that he would like to see a cost estimate provided by the DOA.

Sen. Hargrove asked if the state is losing money because there is no outreach program. Mr. Eicholtz said the state probably is not losing money, but it is upsetting Montana vendors who cannot compete with larger or out-of-state vendors.

Sen. Hargrove said that it could be simplistic, but that he could almost speak to Option #3 (reduce funding). He said that when the playing field is leveled, there is no incentive for anyone to rise to the top. He said that Montana businesses can learn to compete and can rise to the top, so this option enhancing outreach may not be doing them a favor in the long run.

Sen. Roush asked for an estimation of required resources to establish an outreach program. Mr. Eicholtz said the DOA was seeking an expression of Committee interest in the idea before making cost estimations.

Sen. Hargrove said he is not certain that the state should be concerned about vendors being upset unless it leads to lawsuits. He said that he believes business people will learn what they need to do to make their businesses successful.

Rep. Dell said that, as a small business owner, he has benefitted from Small Business Administration seminars that provide information on how to access federal contracts.

Rep. Brainard said that the majority of Montana businesses are small, and that he is not sure how many would even be interested in serving as vendors to the state. He said one difficulty with the education aspect is that it would probably work very well in the urban areas, but not in rural areas. The state has an obligation to disburse information that is requested, and interested business people will pursue it if they know where to access it. He suggested that an addition to the mailing of business tax returns could be notice of where to find specific information.

Diane Tordale, Purchasing Officer, DOT, said that she fields approximately 15 requests every week from businesses that want to know how to become vendors for the state. She estimated that the phone calls average 15-20 minutes each.

Rep. Brainard said the threshold question is how much education is sufficient, and the second question would be the amount of the resources that would be required. He commented that throwing money at a problem is not always the best solution.

Sen. Ekegren said an outreach program should be done for a couple of years and then let businesses be on their own.

Sen. Bartlett said that the Job Service routinely hosts half-day workshops to teach people how to understand payroll forms required by the state. She said that outreach programs for businesses could piggyback on those workshops but that the phone calls with questions will never be entirely eliminated.

Rep. Brainard said part of the question involves the scope of the outreach program, and how it will be accomplished.

Sen. Bartlett said that she would like the DOA to provide the Committee with a suggested program outline and an accompanying cost estimate.

Rep. Brainard asked that the DOA provide the outline and cost estimate to the Committee by the next meeting.

### **RECESS**

After a motion from Sen. Bartlett, the Committee recessed at 5:25 p.m., to reconvene at 8:30 a.m., February 29, 2000.

**State Administration, Public Retirement, and Veterans' Affairs Interim Committee**

**February 29, 2000**

**Montana Association of Counties**

**Helena, Montana**

**CALL TO ORDER**

Rep. Brainard reconvened the meeting at 8:33 a.m. Roll call was noted.

**STAFF PRESENT**

Sheri Heffelfinger, Research Analyst  
Dave Bohyer, Director, Office of Research Policy & Analysis  
John MacMaster, Attorney  
David Niss, Attorney  
Jo Ann Jones, Secretary

**VISITORS**

Visitors' list, Attachment #1.

**STATE EMPLOYEE INTEREST IN A STATE CONTRACT**

**Exhibit #3: Montana Law Relating to State Officer or Employee Interest in or Improper  
Influence in Regard to a Public Contract**

Mr. MacMaster reviewed Exhibit #3.

Ms. Motl said the law is confusing because one section states that a former state employee cannot pursue state contracts until 12 months after termination, but another section claims the same prohibition with a 6-month time period after termination.

Rep. Brainard said the appearance of impropriety may apply to this situation.

Dal Smilie, staff attorney, DOA, said one big loophole in the law is when a former state employee is hired by a company who has had a longstanding contract with the state. He said he believes the intention of the law is to prevent a state employee from feathering the nest, but that the statutes may be too broad. He said the legal test (established in the *Wadsworth* case) to determine conflict of interest is very narrow.

Rep. Brainard said that a current employee who moonlights by pursuing a state contract creates a situation in which wrongdoing may be difficult to determine. Mr. Smilie said the *Wadsworth* case was about moonlighting and the Montana Supreme Court held that people have a right to pursue employment, and that includes moonlighting.

Rep. Dell said the problem is determining how narrow the statutory language should be. Mr. Smilie said the prohibition on using state equipment and time for personal use should include things other than private employment, and it should limit the ability of people who monitor or evaluate contracts to get private employment. He said that spouses and family members become another issue to be considered.

Sen. Hargrove said all the issues need to be pulled together and made consistent. He asked how many complaints or court cases occur in a year's time. Mr. Smilie said there are none but that's probably because the loophole is so large. He recommended narrowing statutory language to target the situations and those employees who can actually harm the state with their actions.

Mr. Bohyer said it might make things easier if the DOA could articulate specifically what statutory changes they would like. Rep. Brainard said the Committee would like more specific information from the DOA, and commented that the state probably has no idea what poor contract monitoring has cost over the years.

Mr. MacMaster said most of the conflict of interest laws were written in response to the party machines that ran Chicago and New York City, and they were broadly written to stop the appearance of impropriety. He said there should be no concern that these laws will ever be challenged in court, and commented that even an employee who has no direct involvement in contracting may have access to information that a vendor might find valuable.

Rep. Brainard said that he was inclined to leave the statutes as they are now because of the danger of being too narrow. He said that the concept of public service as an employee must be kept in mind.

Sen. Bartlett said that she believes much of the statutory language was amended in the 1995 or 1997 legislative sessions. She said the state's real interest is preventing corruption that works to the detriment of the taxpayers and, although an employee has a right to seek employment, an employee has no right to seek employment through corruption.

Sen. Hargrove said that there may be confusion that needs to be clarified but, ultimately, no substantive corrections to the statutes is probably needed. He said the openness of state government may be the best deterrent to corruption there is.

Rep. Brainard said that an attempt to influence state employees can be a very nebulous thing and difficult to prove. He said that it's difficult to legislate against such a large gray area of human action.

Mr. Smilie said he thought the DOA could develop statutory language that would neither be too broad nor too narrow. The Committee requested staff to prepare draft legislation for further consideration.

### Certification of Procurement Officials and Training of Contract Administrators

Mr. Bohyer said that due to the complexity of procurement and contract management, training is needed to ensure the state's best interest by producing and monitoring effective contracts. The options for discussion include doing nothing, developing a state-directed training program, or requiring all procurement and contract management officials to achieve national certification.

Rep. Brainard asked if contract monitoring is performed by the department that enters into the contract. Ms. Motl said contract monitoring is done by the contracting agency, although the DOA is involved until the contract is issued.

Mr. Bohyer said that when MTPRRIME was being developed, it was recommended that the state earmark 10%-12% of the contract amount for monitoring, but the end result was that less than 1% of the contract value was dedicated to monitoring. He said not enough time is dedicated to management and most of the people who manage contracts have not been trained to do so. The state is not prepared or able to adequately enforce contracts and has been more disposed to negotiate settlements instead. He said that the state needs to create the perception of not being a patsy to be taken advantage of by vendors.

Mr. Eicholtz said this issue constitutes the core of SJR 9 because the state needs to hire the right people and needs to train those already employed.

Sen. Bartlett asked if training for those who write contracts is also included. Mr. Eicholtz said that it includes training for procurement personnel, too.

Sen. Hargrove said this is an area in which it is very easy to be penny-wise and pound foolish, and asked if national certification is available. Mr. Eicholtz said that it is

possible to hire certified people but that might prove to be difficult in Montana; another option is to get certification training for existing employees.

Sen. Hargrove said national certification is a good thing and said the next questions are what needs to be done, and how much will it cost.

Rep. Williams asked if most states use the national certification or do they tailor it to their individual requirements. Mr. Eicholtz said other states do both because procurement contracts have become so complex.

Rep. Dell asked if training is being done now. Mr. Eicholtz said some training is being done and there are a couple of employees on staff who were certified, but their certifications have lapsed. He said the DOA does some training in the basics for other agencies, but three contracts officers and three contracts assistants are responsible for over \$100 million in state contracts.

Rep. Brainard asked for the DOA's analysis of the Oregon system versus the Massachusetts system. Mr. Eicholtz said the Massachusetts system is very interesting, but they are the only state that issues contracts and performs procurement in that manner. He said Montana is more aligned with the system in Oregon. Ms. Motl said that Montana is somewhat similar to Massachusetts' approach to procurement because a group concept is used for writing and negotiating contracts. However, once the contract is implemented, all control goes back to the original agency.

Sen. Hargrove said that he was impressed with the effectiveness of the Massachusetts system.

Ms. Tordale said the team concept is used at the DOT when contracts are being structured. Even the vendors are involved.

Rep. Brainard asked for analysis of Oregon's use of the Department of Justice for contract review. Mr. Eicholtz said that Mr. Smilie reviews contracts for the DOA, but Oregon goes further than that. He said that Dugan Petty, Oregon's state purchasing manager, had indicated in private conversation that the Oregon system of contract review is burdensome and creates delay.

Mr. Bohyer said at the federal level, there has been investigation of the Department of Defense and its vendors, and also in the area of human services. He said that Legislative Audit Division staff have indicated that the real problems arise in contract monitoring, not the procurement itself. He said the federal situation is mirrored in Montana, albeit on a smaller scale.

Rep. Brainard said the issue comes down to whether FTEs will have to be hired just to monitor contracts. He said there is a lot of resistance to hiring FTEs, no matter what their purpose. He said the training of existing personnel should be considered, too, and said that he likes the team concept.

Sen. Hargrove said that a lot of good information can be gathered from the people who are seeking to make money off the state. He asked if the number of state contracts is always on the increase. Ms. Motl said the number fluctuates, but noted that contracts are more complex and demand more time and sophistication even if the overall total declines.

Mr. Bohyer said the current trend is not to increase FTEs, but to farm out services to non-profit organizations and other providers. He said that although the number of FTEs is not growing, government itself is growing because of the contracts.

Rep. Brainard said this environment might require that virtually all state employees have to be contract officers. He recommended that the next Legislature be informed that if federal money is accepted or a contract be issued, contract monitoring be built into the appropriation. He said that proper contract management may have prevented some of the problems with the Magellan contract.

Sen. Bartlett said that, in regard to the Magellan contract, staff said that they could manage the quality of care but had no experience in handling managed care. She said that the system could be frontloaded to ensure that staff have the knowledge to properly manage those types of situations.

Rep. Brainard said it may not be possible to legislate how contract monitoring and administration should be done, but it may be possible to adopt a policy instead.

Mr. Bohyer said budget bills could have language that states how the contract is to be monitored.

Rep. Williams asked who monitors the contractors. Mr. Bohyer said that current monitoring of contracts is insufficient (according to the Legislative Audit Division staff findings). The literature suggests that, historically, contractors have always served their own best interests. He said it is incumbent upon the state to ensure that what is being delivered is the same thing that the state thought it had purchased.

Rep. Brainard said that the Legislature will probably have to consider dedicating some funds, perhaps a percentage of the contract value, to contract management.

Sen. Bartlett said that the people involved in the selection process for both the Magellan and MTPRRIME contracts felt they had done an excellent job, but yet there were problems in both. She said that a great deal of knowledge is acquired in painful

situations such as that and she does not want that knowledge to be lost to the state or to other agencies.

Mr. Bohyer said that a lot of knowledge and experience will be lost to the state during the next ten years due to turnover, particularly attrition and retirement. He said the people involved in the original MTPRRIME contract may no longer be state employees when that software needs to be replaced.

Rep. Brainard said institutional memories tend to become rules, regulations, and even legislation. He suggested the initiation of a system to examine contract development, the legislative process, and how the contract was implemented.

Sen. Bartlett said that the people who are intimately involved with contracting should be required to regularly identify the things that they would have done differently.

Rep. Clark asked if Sen. Bartlett's suggestion would be a function of ongoing training. Rep. Brainard said that it would be as long as there was feedback.

Mr. Eicholtz said that Oregon utilizes a training advisory group to determine where training is needed and what type of training is required. He said certification mandates ongoing training to keep the certification current.

Sen. Roush said he approved of the team concept and said he understands that if the state doesn't manage the contract, the vendor will. He said vendors have knowledgeable, well trained people who negotiate contracts for them and the bottom line is that Montana must improve its performance in the business world. He said he would like to have the DOA develop a plan with an estimation of cost for presentation to the Committee.

Ms. Tordale said any Committee decision must filter down through the agencies from the DOA because the agencies do their own contract monitoring. She said that more FTEs may be necessary.

Rep. Brainard said it is his impression that the Committee wishes to examine the development of a state directed training program and requested staff to prepare a draft of a proposed program.

Mr. Bohyer said the proposals will be submitted by the March meeting. Mr. Eicholtz said that may not be enough time for their development. Mr. Bohyer said that he was contemplating that the SJR 9 work would be finished by the May meeting. Rep. Brainard requested the DOA to submit general requests by the March meeting.

Sen. Bartlett said she would like to raise the issue of small businesses being overwhelmed by contracting procedures and would like review of boilerplate contract language, especially in small contracts. She said her question is whether its inclusion is necessary for small contracts.

Mr. Bohyer said another committee is examining the structure of court and local government funding. He said that local governments are increasingly contracting out services and that may create some administrative issues that will arise in the state administration committees during the 2001 legislative session.

Rep. Brainard said he would like further information on how state money on contracts is being spent.

#### **OTHER BUSINESS**

Ms. Heffelfinger asked for Committee discussion on the powers and duties of subcommittees because action will have to be taken by the subcommittees at some point during the interim.

Sen. Hargrove recommended an update from the Veterans' Affairs Subcommittee during the March meeting because the subcommittee will not meet again until May.

Mr. Bohyer asked for Committee comment on how well SB 11 has worked during the 1999-2000 interim.

### **ADJOURNMENT**

There being no further business to come before the Committee, Sen. Bartlett moved to adjourn. The meeting was adjourned at 11:35 a.m. The next meeting will be March 30-31, 2000.

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